



BILLING CODE: 5001-06

DEPARTMENT OF DEFENSE

Office of the Secretary

Establishment of the Response Systems to Adult Sexual Crimes Panel

AGENCY: DoD.

ACTION: Establishment of Federal Advisory Committee.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C. Appendix), the Government in the Sunshine Act of 1976 (5 U.S.C. § 552b), and 41 CFR § 102-3.50(a), the Department of Defense gives notice that it is establishing the charter for the Response Systems to Adult Sexual Assault Crimes Panel (“the Response Systems Panel”). The Response Systems Panel has been determined to be in the public interest.

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703-692-5952.

SUPPLEMENTARY INFORMATION: The Response Systems Panel is a non-discretionary federal advisory committee that shall provide recommendations on how to improve the effectiveness of the investigation, prosecution, and adjudication of crimes involving adult sexual assault and related offenses, under 10 U.S.C. 920 (Article 120 of the UCMJ). The Response Systems Panel’s review shall include the following:

- a. Using criteria the Response Systems Panel considers appropriate, an assessment of the strengths and weaknesses of the systems, including the administration of the UCMJ, and the investigation, prosecution, and adjudication of adult sexual assault crimes during the period 2007 through 2011.

- b. A comparison of military and civilian systems for the investigation, prosecution, and adjudication of adult sexual assault crimes. This comparison shall include an assessment of differences in providing support and protection to victims, and the identification of civilian best practices that may be incorporated into any phase of the military system.
- c. An assessment of advisory sentencing guidelines used in civilian courts in adult sexual assault cases and whether it would be advisable to promulgate sentencing guidelines for use in courts-martial.
- d. An assessment of the training level of military defense and trial counsel, including their experience in defending or prosecuting adult sexual assault crimes and related offenses, as compared to prosecution and defense counsel for similar cases in the Federal and State court systems.
- e. An assessment and comparison of military court-martial conviction rates with those in the Federal and State courts and the reasons for any differences.
- f. An assessment of the roles and effectiveness of commanders at all levels in preventing sexual assaults and responding to reports of sexual assault, including the role of a commander under Article 60, UCMJ.
- g. An assessment of the strengths and weakness of proposed legislative initiatives to modify the current role of commanders in the administration of military justice and the investigation, prosecution, and adjudication of adult sexual assault crimes.
- h. An assessment of the adequacy of the systems and proceedings to support and protect victims in all phases of the investigation, prosecution, and adjudication of adult sexual assault crimes, including whether victims are provided the rights afforded by 18 U.S.C. § 3771, Department of Defense Directive 1030.1, and Department of Defense Instruction 1030.2.

i. Such other matters and materials the Response Systems Panel considers appropriate.

In conducting reviews and assessments and preparing reports, the Response Systems Panel may review and incorporate, as appropriate, the dates and findings of applicable ongoing and completed studies. The Response Systems Panel may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Panel considers appropriate to carry out its duties. Upon request by the Chair of the Response Systems Panel, a department or agency of the Federal Government shall provide information that the Response Systems Panel considers necessary to carry out its duties.

Pursuant to Section 567(b)(1)(A) of the FY 2013 NDAA, the Response Systems Panel shall be comprised of nine members, five of whom are appointed by the Secretary of Defense and one member each appointed by the Chairmen and Ranking Members of the Committees on Armed Services of the Senate and House of Representatives, respectively. Appointments shall be made not later than 120 days after the date of the enactment of the FY 2013 NDAA.

The members shall be selected from among private United States citizens, who collectively possess expertise in military law, civilian law, the investigation, prosecution, and adjudication of sexual assaults in Federal and State criminal courts, victim advocacy, treatment for victims, military justice, the organization and missions of the Armed Forces, and offenses relating to rape, sexual assault, and other adult sexual assault crimes. The Chair shall be appointed by the Secretary of Defense from among the members of the Response Systems Panel.

Members shall be appointed for the life of the Response Systems Panel. Any vacancy in the Response Systems Panel shall be filled in the same manner as the original appointment.

Members of the Response Systems Panel, who were appointed by the Secretary of Defense, shall be appointed as experts or consultants under the authority of 5 U.S.C. § 3109 to serve as special

government employee (SGE) members. With the exception of travel and per diem for official travel, Response Systems Panel members shall serve without compensation.

The DoD General Counsel, according to the DoD policies and procedures, may select experts and consultants as subject matter experts under the authority of 5 U.S.C. § 3109 to advise the Response Systems Panel or its subcommittees; these individuals do not count toward the Response Systems Panel's total membership nor do they have voting privileges. In addition, these subject matter experts, when appointed, shall not participate in any discussions dealing with the substantive matters before the Response Systems Panel or its subcommittees.

The DoD, when necessary and consistent with the Response Systems Panel's mission and DoD policies and procedures, may establish subcommittees, task forces, or working groups to support the Response Systems Panel. Establishment of subcommittees will be based upon a written determination, to include terms of reference, by the Secretary of Defense, the Deputy Secretary of Defense, or the DoD General Counsel as the DoD Sponsor.

These subcommittees shall not work independently of the Response Systems Panel and shall report all of their recommendations and advice to the Response Systems Panel for full deliberation and discussion. Subcommittees, task forces, or working groups have no authority to make decisions and recommendations, verbally or in writing, on behalf of the Response Systems Panel. No subcommittee or any of its members can update or report, verbally or in writing, on behalf of the Response Systems Panel directly to the DoD or any Federal officer or employee.

The Secretary of Defense shall appoint subcommittee members even if the member in question is already a member of the Response Systems Panel. Such individuals, if not full-time or part-time government personnel, shall be appointed as experts or consultants under the authority of 5 U.S.C. § 3109 to serve as SGE members. Subcommittee members shall serve for the life of the

subcommittee. With the exception of travel and per diem for official travel related to the Response Systems Panel or its subcommittees, subcommittee members shall serve without compensation.

All subcommittees operate pursuant to the provisions of FACA, the Sunshine Act, governing Federal statutes and regulations, and established the DoD policies and procedures.

The Response Systems Panel's Designated Federal Officer (DFO), pursuant to the DoD policy, shall be a full-time or permanent part-time DoD employee, and shall be appointed, in accordance with governing the DoD policies and procedures.

In addition, the Response Systems Panel's DFO is required to be in attendance at all meetings of the Response Systems Panel and its subcommittees for the entire duration of each and every meeting. However, in the absence of the Response Systems Panel's DFO, a properly approved Alternate DFO, duly appointed to the Response Systems Panel according to the DoD policies and procedures, shall attend the entire duration of the Response Systems Panel and its subcommittee meetings.

The DFO, or the Alternate DFO, shall approve all of the meetings of the Response Systems Panel and its subcommittees called by the Chair; prepare and approve all meeting agendas; and adjourn any meeting when the DFO or the Alternate DFO determines adjournment to be in the public interest or required by governing regulations or the DoD policies and procedures.

Pursuant to 41 CFR §§ 102-3.105(j) and 102-3.140, the public or interested organizations may submit written statements to the Response Systems to Adult Sexual Assault Crimes Panel membership about the Response System Panel's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of Response Systems to Adult Sexual Assault Crimes Panel.

All written statements shall be submitted to the Designated Federal Officer for the Response Systems to Adult Sexual Assault Crimes Panel, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Response Systems to Adult Sexual Assault Crimes Panel's Designated Federal Officer can be obtained from the GSA's FACA Database – <https://www.fido.gov/facadatabase/public.asp>. The Designated Federal Officer, pursuant to 41 CFR § 102-3.150, will announce planned meetings of the Response Systems to Adult Sexual Assault Crimes Panel. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: April 29, 2013.

Aaron Siegel,
Alternate OSD Federal Register Liaison Officer,
Department of Defense.

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